

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)	
)	
Application by Verizon New England)	
Inc., Bell Atlantic Communications,)	
Inc. (d/b/a Verizon Long Distance),)	
NYNEX Long Distance Company)	CC Docket No. 02-61
(d/b/a Verizon Enterprise Solutions),)	
Verizon Global Networks Inc., and)	
Verizon Select Services Inc., for)	
Authorization to Provide In-Region,)	
InterLATA Services in Maine)	

EVALUATION OF THE
UNITED STATES DEPARTMENT OF JUSTICE

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Inc., Bell Atlantic Communications,)	
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NYNEX Long Distance Company)	CC Docket No. 02-61
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InterLATA Services in Maine)	

EVALUATION OF THE
UNITED STATES DEPARTMENT OF JUSTICE

Introduction and Summary

The United States Department of Justice (“the Department”), pursuant to Section 271(d)(2)(A) of the Telecommunications Act of 1996¹ (“the 1996 Act”), submits this evaluation of the application filed by Verizon New England Inc., Bell Atlantic Communications, Inc. (d/b/a Verizon Long Distance), NYNEX Long Distance Company (d/b/a Verizon Enterprise Solutions), Verizon Global Networks Inc., and Verizon Select Services Inc., on March 21, 2002, to provide in-region, interLATA services in Maine.

This application to the Federal Communications Commission (“FCC” or “Commission”) is Verizon’s first for the state of Maine, and follows its successful applications for long distance entry in

¹ Pub. L. No. 104-104, 110 Stat. 56 (1996) (codified as amended in scattered sections of 47 U.S.C.).

Massachusetts, Rhode Island, and Vermont, other states in its New England region, as well as successful applications for Pennsylvania, Connecticut, and New York.² The Department concludes that Verizon has generally succeeded in opening its local markets in Maine to competition and recommends approval of Verizon's application for Section 271 authority in the state.

I. Maine Public Utilities Commission Proceedings

The Maine Public Utilities Commission ("Maine PUC") has facilitated the development of competition in the local telecommunications markets by establishing carrier-to-carrier wholesale performance measurements, which incorporate improvements from New York and several other states³; conducting extensive pricing proceedings that established wholesale rates for unbundled network elements ("UNEs")⁴; and adopting a Performance Assurance Plan intended to ensure that an appropriate level of wholesale performance is maintained once Verizon's Section 271 application is approved.⁵ In addition, the Maine PUC has established a Rapid Response Process ("RRP") in order

² See generally *FCC Vermont Order*; *FCC Rhode Island Order*; *FCC Pennsylvania Order*; *FCC Connecticut Order*; *FCC Massachusetts Order*; *FCC New York Order*.

³ Maine PUC Comments at 2, 91-95; Verizon Section 271 Compliance Letter at 1 (confirming Maine PUC's adoption of Performance Assurance Plan ("PAP") in March 1 letter entails adoption of carrier-to-carrier guidelines relating to reporting of wholesale performance); Verizon Br. at 92-93 (noting Verizon Maine performance measures are "virtually identical" to those developed in the New York PSC's collaborative carrier working group process and employed in New York, Massachusetts, Connecticut, and Rhode Island).

⁴ Maine PUC Comments at 3, 20-28; Maine PUC Pricing Order I at 1 (establishing UNE rates); Maine PUC Pricing Order II at 1 (revising switching rates, adopting interconnection rates, and correcting rates attached to Maine Pricing Order I); Maine PUC Pricing Order III at 1 (correcting rates attached to Maine Pricing Order II).

⁵ Maine PUC Comments at 2-4, 88-91; Maine PUC Section 271 Compliance Letter at 3-5 (adopting PAP "modeled on the New York plan to which Verizon is subject in New York, Massachusetts, Rhode Island, and Connecticut," subject to certain modifications, including "any changes warranted by our [continuing] review, including adoption of a PAP modeled on the New Jersey PAP").

to resolve certain disputes between Verizon and CLECs more quickly than traditional dispute resolution processes would allow.⁶

The Maine PUC's review of Verizon's state Section 271 filing included an independent third-party test by PricewaterhouseCoopers ("PwC") designed to determine whether the operations support systems ("OSS") that Verizon uses in Maine are the same as those it uses in Massachusetts.⁷ PwC concluded that Verizon's assertions regarding the "sameness" of its "New England Region Operational Support Systems (specifically the pre-order, order, provisioning, maintenance & repair, relationship management infrastructure, and billing domains) and Performance Metrics Reporting" are "fairly stated in all material respects."⁸

On April 10, the Maine PUC recommended that the FCC approve Verizon's Section 271 application.⁹

⁶ Maine PUC Section 271 Compliance Letter at 3 & Attach. A; *see also* Verizon Guerard/Canny/Abesamis Decl. ¶ 105. At the Maine PUC's request, Verizon agreed to participate in the Rapid Response Process ("RRP"). *See* Verizon Section 271 Compliance Letter at 3. Complaints will be resolved by an RRP team designated by the PUC and entrusted with limited, but sufficient, authority to impose penalties designed to ensure responsiveness. *See* Maine PUC Section 271 Compliance Letter Attach. A at 3. The RRP team will employ e-mails and conference calls to arrive at preliminary findings a mere four days after receipt of a CLEC complaint, and will attempt to issue an appealable final order shortly thereafter. *Id.* at 4-6. This novel approach implicitly acknowledges that competition can be meaningfully affected by conduct that cannot easily be quantified and addressed by means of a PAP or adequately remedied via more elaborate process. On or after September 1, 2002, the PUC plans to evaluate the effectiveness of the RRP and determine whether it should be codified in the commission's Rules. *See* Maine PUC Section 271 Compliance Letter at 3.

⁷ Verizon McLean/Wierzbicki/Webster Decl. ¶ 11; *see also* FCC Massachusetts Order ¶¶ 43-181 (concluding that Verizon provides CLECs non-discriminatory access to its OSS, including unbundled loops, in Massachusetts).

⁸ PwC Sapienza/Bluvol Decl. ¶¶ 12-16.

⁹ Maine PUC Comments at 115; *see also* Maine PUC Section 271 Compliance Letter at 5 (state commission expects to recommend approval of Verizon's application "[c]onditioned on Verizon Maine's assurance that it will satisfy the items specified above").

II. The Department's Evaluation

In assessing whether the local markets in a state are fully and irreversibly open to competition, the Department looks first to the actual entry in a market.¹⁰ But the Department does not broadly presume that all three entry tracks -- facilities-based, unbundled network elements ("UNEs"), and resale -- are open or closed on the basis of an aggregate level of entry alone.¹¹

Together, according to Verizon's data, Verizon and CLECs serve a total of approximately 750,700 lines in Verizon's Maine service area as of December 2001.¹² Of the total lines in Verizon's service area in Maine, 32.7 percent, or approximately 245,300 serve businesses, and 67.3 percent, or approximately 505,500 serve residential customers.¹³ For business and residential customers combined, Verizon estimates that CLECs using all modes of entry serve approximately 50,600 lines, or approximately 6.7 percent of all lines in Verizon's service area in the state.¹⁴

¹⁰ See DOJ Pennsylvania Evaluation at 3-4 ("The Department first looks to actual competitive entry, because the experience of competitors seeking to enter a market can provide highly probative evidence about the presence or absence of artificial barriers to entry. Of course, entry barriers can differ by types of customers or geographic areas within a state, so the Department looks for evidence relevant to each market in a state." (Footnote omitted.)).

¹¹ See, e.g., DOJ Georgia/Louisiana Evaluation at 7 ("Although the Department presumes that fully facilities-based competition is not hindered in a competitively significant manner based on the entry recorded in Georgia, the amount of entry does not justify extending such a presumption to other modes of entry in Georgia."); DOJ Missouri I Evaluation at 6-7 ("The Department presumes that opportunities to serve business customers by fully facilities-based carriers and resellers are available in Missouri, based on the entry efforts reflected in SBC's application. There is significantly less competition to serve residential customers. There also is less competition by firms seeking to use UNEs, including the UNE-platform, and there are some indications that a failure by SBC to satisfy all of its obligations may have constrained this type of competition." (Footnotes omitted.)).

¹² See Verizon Dinan/Garzillo/Anglin Decl. ¶ 39; Verizon Torre Decl. Attach. 1 at 3 tbl.1. Maine has several incumbent local exchange carriers other than Verizon.

¹³ See Verizon Dinan/Garzillo/Anglin Decl. ¶ 39; Verizon Torre Decl. Attach. 1 at 3 tbl.1.

¹⁴ See *id.*

Competitors have made progress in penetrating the business market in Maine. CLECs serve approximately 19.5 percent of all business lines in Verizon's Maine service area.¹⁵ CLECs serve approximately 3.6 percent of all business lines using primarily their own fiber optic networks that are either connected directly to the customer premises or connected through loops leased from Verizon.¹⁶ CLECs resell Verizon's services to serve approximately 14.8 percent of all business lines.¹⁷ CLECs use the UNE-platform (a combination of loop, switch, and transport elements) to serve 1.1 percent of such lines.¹⁸

Using the facilities-based and resale modes of entry combined, CLECs serve less than 1 percent of all residential lines in Verizon's Maine service area.¹⁹ CLECs have yet to serve any residential lines in Maine by means of the UNE-platform.²⁰

The amount of entry by competitive facilities-based carriers and resellers serving business customers in Maine and the absence of complaints regarding Verizon's fulfillment of its obligations to open its markets to these modes of entry, lead the Department to conclude that opportunities to serve business customers via the facilities-based and resale modes of entry are available there. Although

¹⁵ See Verizon Dinan/Garzillo/Anglin Decl. ¶ 39; Verizon Torre Decl. Attach 1 at 3 tbl.1 (CLECs serve approximately 47,900 business lines).

¹⁶ See Verizon Dinan/Garzillo/Anglin Decl. ¶ 39; Verizon Torre Decl. Attach. 1 at 3 tbl.1 (CLECs serve approximately 8,900 business lines using at least some of their own facilities).

¹⁷ See Verizon Dinan/Garzillo/Anglin Decl. ¶ 39; Verizon Torre Decl. Attach. 1 at 3 tbl.1 (CLECs serve approximately 36,300 business lines via resale).

¹⁸ See Verizon Dinan/Garzillo/Anglin Decl. ¶ 39; Verizon Torre Decl. Attach. 1 at 3 tbl.1 (CLECs serve approximately 2,700 business lines through the UNE-platform).

¹⁹ See Verizon Dinan/Garzillo/Anglin Decl. ¶ 39; Verizon Torre Decl. Attach. 1 at 3 tbl.1 (CLECs serve approximately 260 residential lines using at least some of their own facilities and 2,500 of such lines via resale).

²⁰ Verizon Torre Decl. Attach. 1 at 3 tbl.1.

there is significantly less competition to serve residential customers and to serve business customers via the UNE-platform, the Department does not believe there are any material obstacles to competition in Maine created by Verizon. Verizon has submitted evidence to show that its OSS in Maine are the same as those that the Commission found satisfactory in Massachusetts.²¹ Moreover, there have been few complaints regarding Verizon's Maine OSS in this proceeding.²²

The low levels of CLEC penetration of residential markets in Maine and, in particular, the lack of entry by means of CLECs' own facilities and by means of the UNE-platform, may reflect the higher UNE pricing that was in effect for most of the period preceding this application as opposed to the UNE prices on which the application is based. The Maine PUC issued orders that reduced certain UNE rates within two months of Verizon's filing of this application.²³

²¹ See *supra* note 8.

²² During the Maine PUC proceedings, "a number of carriers raised issues concerning their difficulty in effectively using Verizon's OSS as well as the lack of training or willingness of Verizon personnel to resolve CLEC-Verizon operational issues." Maine PUC Comments at 14. The Maine PUC reviewed these allegations and concluded that, although Verizon caused "much of the confusion, delay, and increased expense" associated with several incidents of OSS failures, Verizon's overall performance had improved and is sufficient to support a finding of non-discriminatory access to network elements. *Id.* at 14-20. The Maine PUC plans to rely on its RRP along with its PAP to continue to "scrutinize Verizon's wholesale operations." *Id.* at 19-20. The CLEC complaints regarding OSS that were raised in the state proceedings were not reiterated in this proceeding.

²³ See *supra* note 4. In its pricing orders, the Maine PUC did not adopt a daily usage files ("DUF") rate. *Id.* Verizon acknowledges that this effectively set the DUF rate at zero unless and until the PUC modifies this rate. See Verizon Br. at 46 n.45; Verizon Dinan/Garzillo/Anglin Decl. ¶ 41. This acknowledgment should assuage AT&T's concerns that the DUF rate in Verizon's model and existing interconnection agreements, which AT&T alleges violates TELRIC principles, is still effective. See AT&T Comments at 14-17 & n.18. *But see id.* at 15 & n.18 (observing that "Verizon has apparently taken no steps to modify its interconnection agreements to reflect the zero rate" and expressing concern that Verizon may still propose a non-TELRIC-based DUF rate in the future); WorldCom Comments at 1 (same).

III. Conclusion

The record in this matter suggests that Verizon has succeeded in opening its local markets in Maine to competition in most respects, and the Department therefore recommends approval of Verizon's application for Section 271 authority in Maine.

Respectfully submitted,

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April 25, 2002

Certificate of Service

I hereby certify that I have caused a true and accurate copy of the foregoing Evaluation of the United States Department of Justice to be served on the persons indicated on the attached service list by first class mail, overnight mail, hand delivery, or electronic mail on April 25, 2002.

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